

Internal Revenue Service

Number: **201418005**
Release Date: 5/2/2014

Index Number: 2601.03-08

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-128046-13

Date:
December 12, 2013

Legend

Grantors =

Daughter 1 =

Daughter 2 =

Granddaughter =

Great Grandson =

Trust Agreement =

Trust A =

Trust B =

Date =

State Statute =

Dear :

This letter responds to the ruling request dated May 29, 2013, and subsequent correspondence, submitted by your authorized representative requesting a generation-skipping transfer tax (GST) ruling regarding the proposed exercise of a power of appointment over assets in Trust A.

The facts submitted are as follows:

Trust A

On Date, Grantors executed Trust Agreement. Date is a date prior to September 25, 1985. Trust Agreement creates Trust A, an irrevocable trust, for the primary benefit of Granddaughter, Grantors' granddaughter.

Article III(E)(2) provides that after Granddaughter reaches the age of twenty-one, the trustee shall pay her all of the net income in annual or more frequent installments. Article III(F) provides that the trustee may pay Granddaughter such amounts from principal as the trustee determines to be necessary for her maintenance, support, or education, including medical and related expenses for physical or mental illness or difficulty and expenses of invalidism. In addition, Article III(F) provides that the trustee may pay to Granddaughter principal, for whatsoever purpose, not to exceed \$50,000 in the aggregate during Granddaughter's lifetime.

Under Article X Granddaughter has an inter vivos and testamentary power of appointment to appoint the trust estate to other trusts or free of trust to any one or more of Grantors' then living issue who, at the time the power becomes effectively exercised, are not then current beneficiaries of a trust under Trust Agreement. Granddaughter may not exercise her power to appoint any portion of the trust estate, directly or indirectly, to herself, her creditors, her estate, or creditors of her estate.

Article III(C) provides that, in default of such exercise, the trust estate will pass: (1) to Granddaughter's issue, *per stirpes*, living at the time of Granddaughter's death or, if none, (2) to Grantors' grandchildren then living, share and share alike, provided that if any such grandchild is not then living but has issue of him or her then living, the property which would have passed to such deceased grandchild had he or she then been living shall pass, *per stirpes*, to such deceased grandchild's issue then living.

Article III(C) also provides that if any property would pass under Article III(C)(1) or (2) to any person who is the Primary Beneficiary of a trust held under Article III, such property that would have passed under such provision to such person shall pass instead to the trustee to be added to the trust estate of the trust being so held and be subject to the terms of such trust. If any property would pass under Article III(C)(1) or (2) to any person who is not then the Primary Beneficiary of a trust held under Article III, such property shall pass instead to the trustee to be held in a separate trust for such person; each such trust shall be held under the terms of the other trusts provided for in Article III, and the Primary Beneficiary of such trust shall be such person for whom such trust is set aside.

Article III(D) provides that Trust A will terminate 21 years after the death of the last surviving member of a class comprised of Grantors' and Grantors' issue who are in being as of the date of this instrument. Grantors declare that their only issue living as of this date are their two daughters, Daughter 1, Daughter 2, and the issue of Daughter 1 and Daughter 2. Upon termination of Trust A, the trust estate is to pass and be distributed free of any trust to the Primary Beneficiary thereof.

It is represented that no additions, actual or constructive, have been made to Trust A since September 25, 1985.

Trust B

Granddaughter proposes to appoint the assets of Trust A to Trust B, an irrevocable trust, for the benefit of her son, Great Grandson. Paragraph A-4 provides that as long as Granddaughter is living, all of the net income of Trust B shall be distributed to Granddaughter, at least annually. The trustee, in its sole judgment, may also pay Granddaughter such amounts from principal as the trustee determines to be necessary for her maintenance, support, or education, including medical and related expenses for physical or mental illness or difficult and expenses of invalidism. In addition, the trustee may pay to Granddaughter principal, for whatsoever purpose, not to exceed \$50,000 in the aggregate during Granddaughter's lifetime.

Paragraph A-5 provides that, after Granddaughter's death, the income of Trust B may be accumulated and retained, in whole or in part, or the trustee may distribute, from time to time, so much of the Trust B estate to Great Grandson or his descendants as, in the trustee's discretion, is in the beneficiary's best interest.

Paragraphs A-7 and A-8 provide that, after Granddaughter's death, Great Grandson will have an inter vivos and a testamentary power to appoint any portion or all of the Trust B estate to one or more of a group composed of his descendants, his spouse, his life partner, a charity, or any descendant of Granddaughter. Each paragraph provides that Great Grandson shall not have the power to appoint the Trust B estate to himself, his creditors, his estate or the creditors of his estate.

Paragraph A-8 provides that Trust B shall terminate upon the death of both Granddaughter and Great Grandson. To the extent Great Grandson does not exercise his testamentary power of appointment, the trust estate shall be distributed: (a) to Great Grandson's descendants, (b) if none are living, to Grantors' descendants, or if none, to Great Grandson's heirs. Paragraph A-8(c) provides that notwithstanding the foregoing, Trust B shall terminate no later than 21 years after the death of the last surviving member of a class comprised of the issue of Grantors who were living on Date.

Paragraph B-1 provides that any portion of a trust estate that, upon the termination of Trust B, would be distributable to a beneficiary who is under age 35 or to

a beneficiary who is under a legal disability, instead shall be distributed to the trustee of a Contingent Trust (unless otherwise directed by the valid exercise of a power of appointment). Paragraph B-2 provides that the income of each Contingent Trust may be accumulated and retained, in whole or in part, or the trustee may distribute to the beneficiary for whom the trust was established, from time to time, so much of the trust estate as, in the trustee's discretion, is in the beneficiary's best interests.

Paragraph B-3 provides that each Contingent Trust shall terminate when the beneficiary for whom such Contingent Trust was created becomes 35 and is under no legal disability or dies before that age. Upon termination, the trust estate shall be distributed: (a) to the beneficiary, or (b) if the beneficiary is not then living, to the beneficiary's estate.

Paragraph F-9 provides that all trusts established under the terms of Trust B shall terminate no later than 21 years after the death of the last surviving member of a class comprised of the issue of Grantors who were living on Date. Any trust still in force at the end of such period shall terminate, and the trust estate shall be distributed to the beneficiary for whom the trust was established. If Great Grandson is still living at the end of such period, the trust estate of the primary trust shall be distributed outright to Great Grandson.

Paragraph F-10 provides that Great Grandson may appoint the property outright or in trust and may create new powers of appointment in a trustee or in any appointee.

State Statute provides that the rule against perpetuities applies to trusts other than charitable trusts. An interest is not good unless it must vest, if at all, not later than 21 years after some life in being at the time of the creation of the interest, plus a period of gestation.

REQUESTED RULING

Granddaughter has requested a ruling that the exercise of her power of appointment to appoint the assets of Trust A to Trust B will not be considered a constructive addition to either Trust A or Trust B and will not cause distributions from Trust B to be subject to the generation-skipping transfer tax.

LAW AND ANALYSIS

Section 2041(a)(2) of the Internal Revenue Code provides that the value of the gross estate shall include the value of all property with respect to which the decedent has at the time of his death exercised a general power of appointment created after October 21, 1942.

Section 2041(b) defines the term "general power of appointment" as a power that is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors,

or the creditors of the decedent's estate. A power to consume, invade, or appropriate property for the benefit of the decedent that is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent is not a general power of appointment.

Section 20.2041-1(c)(1) of the Estate Tax Regulations provides, in part, that a power of appointment is not a general power if by its terms it is either (a) exercisable only in favor of one or more designated persons or classes other than the decedent or his creditors, or the decedent's estate or the creditors of the holder's estate, or (b) expressly not exercisable in favor of the decedent or his creditors, or the decedent's estate, or the creditors of his estate.

Section 2601 imposes a tax on every generation-skipping transfer (GST). The term "generation-skipping transfer" is defined in § 2611 as a taxable distribution, a taxable termination, and a direct skip.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 (the Act) and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, provide that the generation-skipping transfer tax shall not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985, but only to the extent that the transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

In the present case, Trust A was irrevocable prior to September 25, 1985. It is represented that no additions, actual or constructive, have been made to Trust A since September 25, 1985. Accordingly, the GST tax does not apply to Trust A.

Section 26.2601-1(b)(1)(v)(A) provides that, except as provided under § 26.2601-1(b)(1)(v)(B), where any portion of a trust remains in the trust after the post-September 25, 1985, release, exercise, or lapse of a power of appointment over that portion of the trust, and the release, exercise, or lapse is treated to any extent as a taxable transfer under chapter 11 or chapter 12, the value of the entire portion of the trust subject to the power that was released, exercised, or lapsed is treated as if that portion had been withdrawn and immediately retransferred to the trust at the time of the release, exercise, or lapse. The creator of the power will be considered the transferor of the addition except to the extent that the release, exercise, or lapse of the power is treated as a taxable transfer under chapter 11 or chapter 12.

In the present case, Granddaughter's powers of appointment are not exercisable in favor of Granddaughter, Granddaughter's creditors, Granddaughter's estate, or the creditors of Granddaughter's estate. Accordingly, Granddaughter's powers of appointment are not general powers of appointment, and Granddaughter's exercise of her power of appointment is not treated as a taxable transfer under chapter 11.

Section 26.2601-1(b)(1)(v)(B) provides a special rule for certain limited powers of appointment. Under this section, the release, exercise, or lapse of a power of appointment (other than a general power of appointment as defined in § 2041(b)) is not treated as an addition to a trust if: (1) such power of appointment was created in an irrevocable trust that is not subject to chapter 13 under § 26.2601-1(b)(1); and (2) in the case of an exercise, the power of appointment is not exercised in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years plus, if necessary, a reasonable period of gestation (the perpetuities period). For these purposes, the exercise of a power of appointment that validly postpones or suspends the vesting, absolute ownership or power of alienation of an interest in property for a term of years that will not exceed 90 years (measured from the date of creation of the trust) will not be considered an exercise that postpones or suspends vesting, absolute ownership or the power of alienation beyond the perpetuities period. The last sentence of § 26.2601-1(b)(1)(v)(B) provides that if a power is exercised by creating another power, it is deemed to be exercised to whatever extent the second power may be exercised.

Section 26.2601-1(b)(1)(v)(D), Example 4 illustrates this rule. In that example, on March 1, 1985, T established an irrevocable trust (Trust 1) as defined in § 26.2601-1(b)(1)(ii). Under the terms of the trust instrument, the trustee is required to distribute the entire income annually to T's child, C, for life, then to T's grandchild, GC, for life. GC has the power to appoint any or all of the trust assets to Trust 2 which is an irrevocable trust (as defined in § 26.2602-1(b)(ii)) that was established on August 1, 1985. The terms of Trust 2's governing instrument provide that the trustee shall pay income to T's great grandchild, GGC, for life. Upon GGC's death, the remainder is to be paid to GGC's issue. GGC was alive on March 1, 1985, when Trust 1 was created. C died on April 1, 1986. On July 1, 1987, GC exercised the power of appointment. The exercise of GC's power does not subject future transfers from Trust 2 to tax under chapter 13 because the exercise of the power in favor of Trust 2 does not suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date of creation of Trust 1, extending beyond the life of GGC (a beneficiary under Trust 2 who was in being at the date of creation of Trust 1) plus 21 years. The result would be the same if Trust 2 had been created after the effective date of chapter 13.

In the present case, Granddaughter's power of appointment over the assets of Trust A was created under Trust Agreement, an irrevocable trust not subject to chapter 13 under § 26.2601-1(b). Therefore, the first requirement of § 26.2601-1(b)(1)(v)(B) is satisfied.

The second requirement of § 26.2601-1(b)(1)(v)(B), is also satisfied in the present case. Under Article A-8, Trust B must terminate no later than 21 years after the

death of the last surviving member of a class comprised of the issue of Grantors' who were living on Date, the date of creation of Trust A. Thus, the exercise by Granddaughter of her power of appointment over the property in Trust A will not postpone or suspend the vesting, absolute ownership or power of alienation of any interest in the trust property for a period, measured from Date, the date Trust A was created, extending beyond any life in being on the date of creation of Trust A plus a period of 21 years.

Granddaughter's exercise of her power of appointment over the property in Trust A will also create another power of appointment in Trust B. In Paragraphs A-7 and A-8, Great Grandson will be granted an inter vivos and testamentary power to appoint the trust estate outright or in trust to his descendants, his spouse, his life partner, a charity, or any descendant of Granddaughter. In exercising his power of appointment, Great Grandson will have the power to create further powers of appointment in a trustee or in an appointee. Great Grandson's powers of appointment are not exercisable in favor of Great Grandson, his creditors, his estate, or the creditors of his estate. Further, pursuant to Paragraph F-9, any further trusts created under the terms of Trust B will terminate no later than 21 years after the death of the last surviving member of a class comprised of the issue of Grantors' who were living on Date, the date of creation of Trust A. Thus, any exercise of Great Grandson's power of appointment will not postpone or suspend the vesting, absolute ownership or power of alienation of any interest in the Trust B property for a period, measured from Date, the date Trust A was created, extending beyond any life in being at the date of creation of Trust A plus a period of 21 years.

Accordingly, based upon the facts submitted and representations made, we conclude that the appointment of Trust A assets to Trust B will not be a constructive addition to either Trust A or Trust B and will not cause distributions from Trust B to be subject to the generation-skipping transfer tax.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the facts described above under the cited provisions or any other provisions of the Code or regulations.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter should be attached to any gift, estate, or generation-skipping transfer tax returns that you may file relating to these matters.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: